

## **BEFORE THE WEST VIRGINIA BOARD OF MEDICINE**

**IN RE: DAVID ELWOOD HESS, M.D.**

### **CONSENT ORDER**

The West Virginia Board of Medicine ("Board") and David Elwood Hess, M.D. ("Dr. Hess") freely and voluntarily enter into the following Order pursuant to West Virginia Code § 30-3-14, *et seq.*

### **FINDINGS OF FACT**

1. Dr. Hess currently holds a license to practice medicine and surgery in the State of West Virginia, License No. 17552, issued originally in 1993. Dr. Hess practices medicine in Bridgeport, West Virginia.
2. In November 2008, the Board initiated a complaint against Dr. Hess, which complaint alleged gross negligence in the use and control of prescription forms, presigning blank prescription forms and unprofessional conduct (complaint number 08-155-W).
3. Dr. Hess filed a response with the Board and appeared for a full discussion of the matter before the Complaint Committee of the Board in September 2009.
4. Dr. Hess has expressed the desire to enter into this Consent Order with the Board in lieu of proceeding to hearing on charges the Board may file against him in relation to complaint number 08-155-W, described in paragraph (2), above.

5. The Board has reviewed this matter in detail and has determined that the continued practice of medicine by Dr. Hess in the State of West Virginia, absent compliance with this Consent Order, could adversely affect the health and welfare of his patients and place the public at risk.

### **CONCLUSIONS OF LAW**

1. The West Virginia Board of Medicine has a mandate pursuant to the West Virginia Medical Practice Act to protect the public interest. W.Va. Code § 30-3-1.

2. Probable cause exists to substantiate charges of disqualification of Dr. Hess from the practice of medicine due to violations of the provisions of West Virginia Code § 30-3-14(c)(17) and (19) and 11 CSR 1A 12.1(e), (j) and (cc), relating to gross negligence in the use and control of prescription forms, presigning blank prescription forms, and unprofessional conduct.

3. The Board has determined that it is appropriate and in the public interest to proceed without the filing of formal charges in a Complaint and Notice of Hearing at this time, provided Dr. Hess enters into this Consent Order.

### **CONSENT**

David Elwood Hess, M.D., by affixing his signature hereon, agrees solely and exclusively for purposes of this agreement, the entry of the Consent Order provided for and stated herein, and proceedings conducted in accordance with this Consent Order to the following:

1. Dr. Hess acknowledges that he is fully aware that, without his consent, here given, no permanent legal action may be taken against him except after a hearing held in accordance with West Virginia Code § 30-3-14(h) and §29A-5-1, *et seq.*;

2. Dr. Hess acknowledges that he has the following rights, among others: the right to a formal hearing before the West Virginia Board of Medicine, the right to reasonable notice of said hearing, the right to be represented by counsel at his own expense, and the right to cross-examine witnesses against him;

3. Dr. Hess waives all rights to such a hearing;

4. Dr. Hess consents to the entry of this Consent Order relative to his practice of medicine in the State of West Virginia; and,

5. Dr. Hess understands that this Consent Order is considered public information, and that matters contained herein may be reported, as required by law, to the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank.

### **ORDER**

**WHEREFORE**, on the basis of the foregoing Findings of Fact and Conclusions of Law of the Board, and on the basis of the consent of Dr. Hess, the Board hereby **ORDERS** as follows:

1. The license to practice medicine and surgery in the State of West Virginia of Dr. Hess is hereby placed in a status of **PROBATION** for a period of five (5) years beginning from the date of entry of this Consent Order;

2. Dr. Hess is hereby **PUBLICLY REPRIMANDED** for his gross negligence in the use and control of prescription forms, presigning blank prescription forms and for his unprofessional conduct;

3. Dr. Hess is fined the sum of one thousand dollars (\$1,000.00), the receipt of which is acknowledged by the signatures on this Consent Order of the President and the Secretary of the Board;

4. Within six (6) months of the entry of this Consent Order, Dr. Hess shall attend and complete twenty (20) hours of continuing medical education ("CME") in the subject of office management practices, including supervision, and shall provide to the Board written documentation of his successful completion thereof;

5. Within six (6) months of the entry of this Consent Order, Dr. Hess shall attend and complete twenty (20) hours of CME in the subject of controlled substances management and shall provide to the Board written documentation of his successful completion thereof;

6. Dr. Hess shall not employ and/or utilize any physician extender with any prescriptive authority, including, but not limited to, physician assistants, advanced nurse practitioners, and/or certified nurse midwives, for the duration of the period of five (5) years Dr. Hess' license is under probation pursuant to this Consent Order, excepting only that period described in paragraph seven (7) below;

7. To allow for the continuity of care of Dr. Hess' patients, Dr. Hess shall have thirty (30) days from the date of the entry of this order to make accommodations for the patient load currently facilitated by his physician extender(s) and to terminate any employment and/or sub-contractor relationship with any physician extender currently employed and/or contracted with

Dr. Hess, including, but not limited to, physician assistants, advanced nurse practitioners, and/or certified nurse midwives;


8. Dr. Hess shall not use, utilize and/or provide to others, any presigned blank prescription forms;


9. Should Dr. Hess fail to comply with the terms of this Consent Order, as determined by the Board, Dr. Hess' license to practice medicine and surgery shall be **AUTOMATICALLY REVOKED**, as of the date of violation, which the Board may effectuate without further hearing or process.

The foregoing Consent Order was entered this 26<sup>th</sup> day of October, 2009.

**WEST VIRGINIA BOARD OF MEDICINE**

  
\_\_\_\_\_  
John A. Wade, Jr., M.D.  
President

  
\_\_\_\_\_  
Catherine Slemp, M.D., M.P.H.  
Secretary

  
\_\_\_\_\_  
David E. Hess, M.D.

Date: 10/16/09

STATE OF West Virginia

COUNTY OF Harrison

I, Juliana I. Dorsey, a Notary Public in and for said county and state,  
do hereby certify that David E. Hess, M.D., whose name is signed on the previous page, has this  
day acknowledged the same before me.

Given under my hand this 16<sup>th</sup> day of October, 2009.

My commission expires March 14, 2015.

Juliana I. Dorsey  
Notary Public

